
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND

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Petition of Maria Andrea Sideris *
(operating as Buenos Amigos Daycare), *
*for special exception for group daycare home.**

No. SE 12-04

MARIA ANDREA SIDERIS, *
proceeding pro se. *

Before: LUTZ ALEXANDER PRAGER, *Hearing Examiner*

HEARING EXAMINER'S OPINION AND DECISION

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I. INTRODUCTION AND SUMMARY.

Maria Andrea Sideris petitioned to enlarge the enrollment of her existing child daycare home from eight to twelve children. The daycare operates in Sideris's home at 10207 Douglas Avenue in Silver Springs in an R-60 zoning district. Ms. Sideris calls her business Buenos Amigos Daycare. The County Zoning Ordinance allows child daycare homes to locate in R-60 zones by special exception if they meet the standards of § 56-G-2.13.1(a) and other Ordinance provisions.

I find that Ms. Sideris has met her burdens of proof that a group daycare home for up to twelve children will have inconsequential effects on the surrounding neighborhood and that her plans for Buenos Amigos satisfy all relevant zoning requirements. In particular, I conclude that "the use is compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of activity." § 56-G-2.13.1(a)(5). I therefore approve the special exception with conditions.

I also grant Ms. Sideris's request to modify parking requirements for the special exception use. Although § 59-E-3.7 of the Ordinance requires a child daycare home to provide four parking spaces – two for residents of the home and one for each non-resident staff member – it permits the parking requirement to be met on adjacent streets when appropriate: "The required number of spaces may be allowed on the street abutting the site * * *." Ms. Sideris has a contract allowing her to use the next-door driveway for her business and, as a condition for approval of the special exception, will be required to continue those uses.

Sideris's petition is unopposed. No one appeared in opposition at the hearing and no letters in opposition were filed. Both the County Planning Board and the County Planning Department recommend approval of the petition. Ex. 24, 24(a).¹ They also recommend off-site parking be allowed. One Board member urged that "a driveway be required as part of the approval." Ex. 24 at 1.

Granting the petition is consistent with the goals of the current master plan for the Kensington-Wheaton area, which envisaged a need for additional child care homes. The plan stated the "number of working parents and children within Kensington-Wheaton suggest[s] a need for additional child day care facilities and opportunities." *Master Plan for the Communities of Kensington-Wheaton* (1989) at 137. The plan cited a 1987 County Planning Board study that "suggested that none of the small-child care centers serving 7-20 children that were studied had a significant negative impact on the surrounding residential community. Although minor traffic problems were noted in some cases, neighbors reported that centers did not create noise, trash, or parking problems." *Id.* at 139. The master plan is further discussed below.

¹ "Ex. __" refers to exhibits in the record.

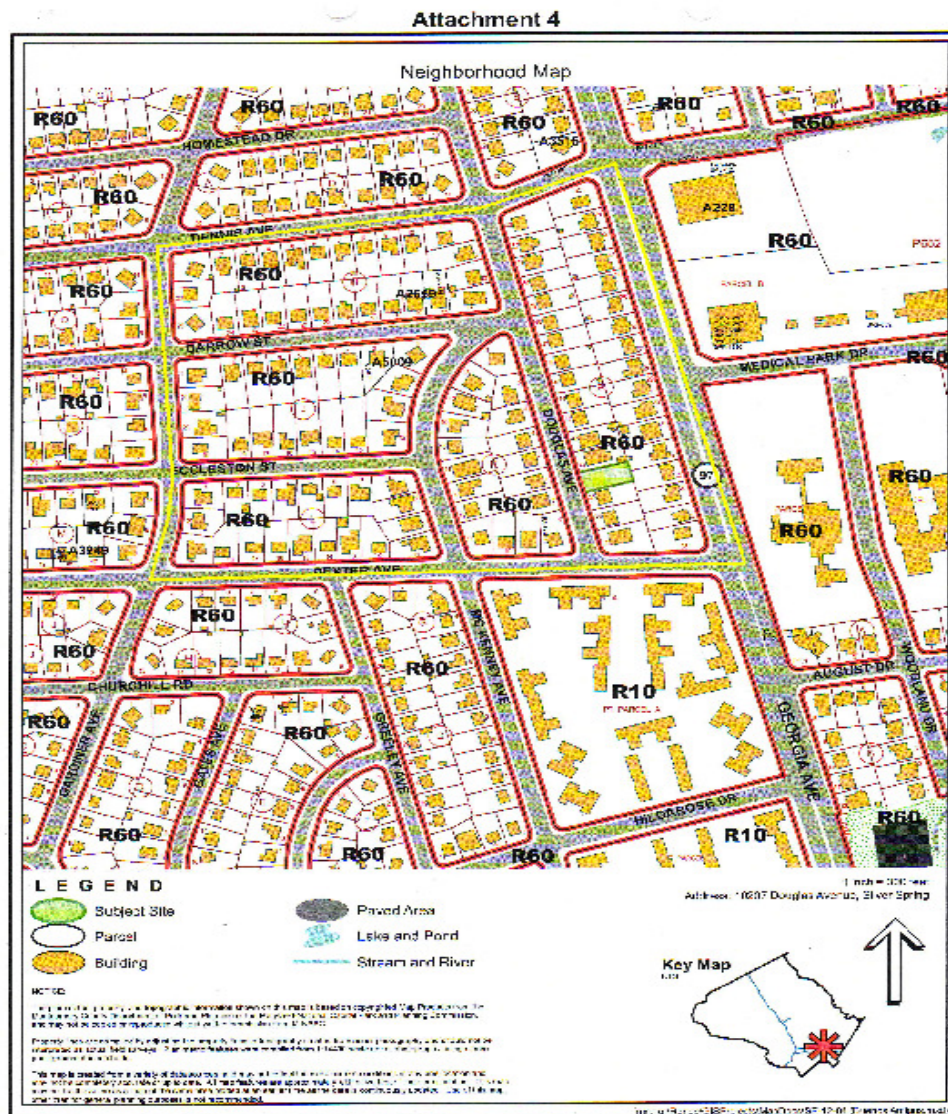
II. FACTUAL RECORD.

A. THE NEIGHBORHOOD.

Douglas Avenue runs parallel to Georgia Avenue, one block to the west. The Planning Department report considered the relevant neighborhood to be bounded by Dennis Avenue to the north, Dexter Avenue to the south, Georgia Avenue to the east, and Gardiner Avenue to the west. Ex. 24(a) at 3. The report describes the neighborhood as being entirely residential, with “no non-residential uses” or special exceptions in the neighborhood. *Id.* The neighborhood is zoned R-60 throughout. See ex. 10 (Montgomery Count Zoning Map 213NW02).

I find the Department’s definition of the neighborhood, though narrow, to be plausible. A small daycare home will rarely have effects beyond its immediate area. In the present case, spillover effects are minimal even in the defined area.

A neighborhood map appears below:

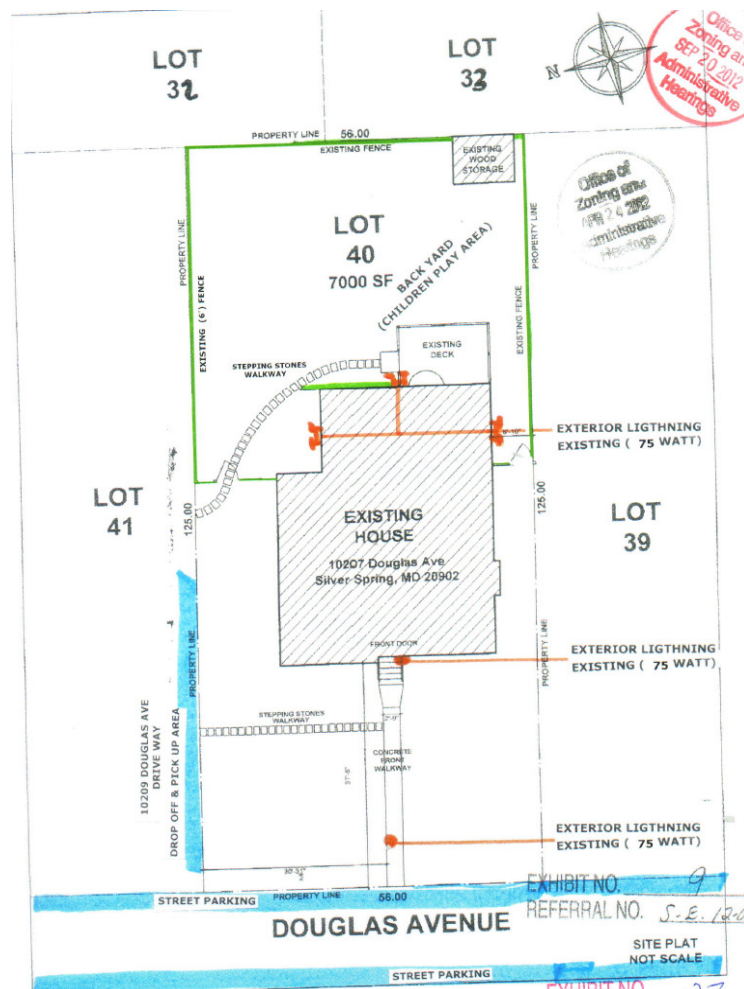


Douglas Avenue is a secondary residential street without sidewalks. Ex. 24(a), att. 5 at 2. There are no daytime parking restrictions on the street. Ex. 24(a) at 5; T. 23.² According to the pictorial evidence in the record, the street is virtually deserted, with empty parking spaces, between 7:00 and 9:30 mornings and in the afternoons between 4:00 and 5:30. See ex. 24(a) at 3, fig. 1; ex. 24, att. 3 at 1; ex 23(a).

The Planning Department states that one Ride-On and six Metrobus bus lines run along Georgia Avenue. Ex. 24(a), att. 5 at 2. The Forest Glen Metrorail station is a little less than three-quarters of a mile south of the Sideris house. *Id.*

B. THE PROPERTY.

Ms. Sideris's house sits on a 7000 sq. ft. lot, 56' wide and 125' deep. Ex. 27.³



² "T. __" refers to a page or pages of the transcript.

³ The legal description of the property is Carroll Knolls § 1, subdivision 0031, block A, lot 40. Ex. 3.



Figure 1: Subject Property (10207 Douglas Avenue)

According to the Planning Department report, the lot contains no forests, streams, flood plains, wetlands, or environmental buffers. Ex. 24(b) at 4. Given its small size, the County Forest Conservation Ordinance does not apply. Ex. 4. The lot hosts small shrubs, a 13' fruit tree, and a 40' tree not otherwise identified. Ex. 11.

The property improvement is a one-story brick-veneer house with an enclosed area of 987 sq. ft. Ex. 3. The main level consists of a family room, three bedrooms, bathroom, and kitchen. A finished basement is largely open area but also contains a half bath, a combined mechanical and laundry room, two storage areas, and a closet. Ex. 13(b).

A one-room 28'x 14' addition – a “sunroom” – projects from the rear of the original building. Ex. 13(a), 13(b), 14(a), 14(b). The addition is accessible by stairs from both the main floor and basement of the house. The addition provides access to a small fenced outdoor deck and to the back-yard. Ex. 13(a).

The County Fire Marshall has approved the basement, sunroom, living room, and master bedroom for napping. Ex. 7.

A concrete walkway leads to the front door; a stepping stone walkway runs from the walkway to the neighboring property (which is owned by Ms. Sideris's mother-in-law). Ex. 27. The rear yard is surrounded by a six-foot high stockade fence. The yard is accessible from the outside through two gates, one on each side of the house. *Id.* A stepping-stone walkway runs from the Sideris in-law's property through one of the gates to the Sideris's deck and backdoor. *Id.* The Sideris property has no driveway or parking pad. *Id.*

Outdoor lighting consists of a front-yard lamppost, a porch light, and three backyard fixtures, one on each side of the addition, and one over the back door. See *id.* All of the lighting can be triggered by sensors. See ex. 21 at 5. The site plan states that all lighting fixtures use 75-watt bulbs, but Sideris's statement of operations states that the light over the entrance to the daycare is a single 60-watt bulb. Compare ex. 27 with ex. 21 at 5.

C. PROPOSED OPERATIONS.

Increasing enrollment from eight to twelve children changes the way Ms. Sideris's business is treated under the Zoning Ordinance. The Zoning Ordinance divides child daycare facilities into several categories.⁴ If there are fewer than eight children under six years old and no more than two non-resident staff members, the Zoning Ordinance labels the facility a "family day care home." Sec. 59-A-2.1 (sub-entry under "child day care facility"). A family daycare home can operate as a matter of right in an R-60 zone. Sec. 59-C-1.31.

The expansion of enrollment to twelve children places Buenos Amigos into a different classification, that of "group daycare home." Sec. 59-A-2.1 (sub-entry under "child day care facility"). The Ordinance defines such a facility as:

A dwelling in which child day care services are provided:

- a. in the home where the licensee is the provider and is a resident;*
- b. for 9 but not more than 12 children including the children of the provider, and;*
- c. where staffing complies with state and local regulations, but no more than 3 non-resident staff members are on site at any time.*

A group daycare home requires special exception approval in an R-60 zone. See listing in § 59-C-1.31 under R-60.

Ms. Sideris started her family daycare home in 2006. T. 65. Most of the children enrolled are two to three years old; two are four. T. 9-10. One of the

⁴ The definitional section of the Ordinance uses two separate words: "day care." Elsewhere in the Ordinance, as in §59-G-2.13.1, the Ordinance combines the words as "daycare." I use the latter spelling in this opinion (except in quotations).

children at Buenos Amigos is Ms. Sideris's daughter who will shortly turn six and will be in school. T. 10.

Ms. Sideris currently has State authorization to care for no more than six children. Ex. 6. When questioned, Ms. Sideris stated she would apply for State approval of the expanded operation once the special exception petition is granted. T. 7-9. (Filing of a revised State certification for the expanded daycare with the Office of Zoning and Administrative Hearings is included below as a prerequisite for expanded operation).

The daycare will operate from 7:30 am to 5:30 pm. T. 7. The children will be outside in the back yard for about an hour in the morning, starting at around 10:00. T. 14. (The backyard contains pint-size playground equipment. See Ex. 15(a)(v)-(vi). Afternoon outdoor play will take place from either 4:30 or 5:00 until closing time at 5:30. T. 14-15. According to Ms. Sideris's statement of operations, not all of her wards will be outside at the same time in the morning. Toddlers play outside in the morning while the infants nap; then the infants go outside while the toddlers have indoor activities. Ex. 21 at 3.⁵ In the afternoon, however, "at least 8 children" – *i.e.*, possibly more – may be in the back yard. *Id.* During the winter, Sideris testified, the back yard is "barely use[d]." Instead, the children go for ten- to twenty-minute walks in the neighborhood. T. 15. Ms. Sideris sometimes plays music in the backyard but does not use amplifiers or extra speakers, "[j]ust a normal CD player." T. 26.

Most of Ms. Sideris's current group of children live in the neighborhood and walk to her house. T. 7. A few live about a mile away and arrive by car. *Id.* Ms. Sideris acknowledged that more car traffic can be generated by a future mix of children. T. 11. She stated that "I'm going to have it clear, I * * * take children every half hour, not all at once. So I talk to the parents about that." *Id.* In her statement of proposed operations, Sideris wrote she expects to generate two arrivals every half hour between 7:00 and 9:30 and maintain a similar staggering of departures between 4:00 and 5:30. Ex. 21 at 2. Prospective clients will be interviewed only after 5:30 or on weekends. T. 27.

Ms. Sideris has a written agreement with her mother-in-law, Angeliki, who lives next door to use the neighboring driveway at 10209 Douglas Avenue. T. 24. The driveway can hold two cars. See Ex. 24(a), att. 5 at 2. The mother-in-law does not own a car and has lived in the same house for thirty years. According to the agreement, "Angeliki Sideris agrees to allowed vehicules of parents registered at Buenos Amigos Daycare (home business of Maria A. Sideris) to park in her driveway as needed." Ex. 26 (spelling as in the original). Part of the driveway is used to bring the children up to the gates into the Sideris property. Ms. Sideris uses the driveway to park her own car. Ex. 22 at 2.⁶ Her husband works elsewhere. He drives off at 6:00 and returns at 5:30. *Id.*

⁵ The exhibit is not paginated.

⁶ The exhibit is not paginated.

According to Ms. Sideris, her entire house has been approved for daycare use. T. 16. She uses the master bedroom for infants. *Id.* The older children play, eat, and nap in the basement, or in the addition. T. 17. The addition is used exclusively for daycare and, according to the statement of operations (Ex. 21), has a dining room with enough space for 12 children. *Id.* at 1. Occasionally, the children watch a movie on the first floor of the house. T. 16-17.

Ms. Sideris has employed an assistant for her current enrollment. T. 19. The one identified in Ms. Sideris's statement of operations was no longer working for her at the time of the hearing. T. 19. Sideris temporarily hired a substitute. *Id.* She expects to hire a new full-time assistant shortly; when she does, the substitute will become a part-time second employee. T. 19-20. The substitute arrives at work on foot. T. 19. According to Sideris, the full-time employee will arrive at 7:30 and leave at 5:40; the part-time employee will arrive at 8:00 and leave at 1:00. Ex. 21 at 3.

Diapers and other trash from the daycare are deposited in two large trashcans at the side of the house. T. 26. Trash is collected weekly. *Id.* Ms. Sideris will not have an outdoor sign identifying Buenos Amigos Daycare. T. 20. No change to the exterior of the property is proposed.

D. AGENCY RECOMMENDATIONS.

Both the Planning Board and technical staff recommended approval of the special exception, subject to conditions.

The Board recommendation was unanimous but one member wanted Ms. Sideris to provide a driveway for parking. Ex. 24 at 1. The other members disagreed, believing "this requirement may be an undue hardship in the event that the applicant loses her current ability to park in the driveway next door, since there is adequate on-street parking." *Id.* The Board recommended one condition of approval be the following: "The group daycare use is limited to 12 children ranging in age from 6 weeks to 6 years who are not yet attending school, and two non-resident employees. *Id.* (I adopt that condition below).

The Planning Department report, based on the Department's own observations, as well as the photographs Sideris filed, states that "on street parking is sufficient to handle the increase of vehicles generated by the proposal." Ex. 24(a) at 5. The report concluded:

Staff finds that the size, scale, and scope of the requested use are minimal, and that any noise, traffic, neighborhood disruption, or environmental impacts associated with the use would be slight. Staff does not find that the non-inherent characteristic of this application (lack of on-site parking) would be adverse to the neighborhood. *Id.*

III. PROCEDURAL RECORD.

All procedural requirements of the Zoning Ordinance and the County Administrative Procedure Act (“APA”) have been satisfied. Ms. Sideris filed her petition on April 24, 2012, with the Office of Zoning and Administrative Hearings. Ex. 1. OZAH accepted it on April 30. See OZAH exhibit list. Sideris submitted eighteen exhibits with her petition.

OZAH issued of notice of public hearing on June 14, scheduling the hearing for September 13, 2012. Ex. 20. The notice was sent to adjoining and confronting property owners and local civic and homeowners associations, as well as to relevant government agencies. *Id.* at 2.

Ms. Sideris’s packet of exhibits included four letters of support. Ex. 16(a)-(d). Only one letter is from someone (a client) who lives in the neighborhood as defined by the Planning Department; another is from a family (also clients) living just outside the neighborhood boundary. T. 21; Ex. 16(b),

OZAH received the Planning Board and Planning Department recommendations on July 31.

The hearing convened as scheduled on September 13. On the day of the hearing, Ms. Sideris filed an affidavit of posting, stating that she had properly posted a sign on her property showing that a special exception petition was pending. Ex. 25.

Ms. Sideris was the only witness. After somewhat sparse direct testimony, I posed a series of questions to allow her to amplify the record. At the end of the hearing I asked Ms. Sideris to file two additional exhibits: a corrected site plan and the contract she stated she had with her mother-in-law to permit use of the driveway on the adjacent property. Both were filed before the record closed on September 27. Ex. 26, 27.

IV. DISCUSSION AND CONCLUSIONS.

A. INTRODUCTION.

The Zoning Ordinance permits group childcare homes, such as Buenos Amigos in R-60 zoning districts but approval is not automatic. Approval can be denied if “facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use * * *.” *Montgomery County v. Butler*, 471 Md. 271, 303, 9 A.3d 824, 843 (2010), quoting *Schultz, v. Pritts*, 291 Md. 1, 15, 432 A.2d 1319, 1327 (1981). In Maryland “each applicant must prove actually, to the satisfaction of the administrative decision-maker (subject to the narrow standards for judicial review and applicable constitutional principles), that his/her/its application will be compatible with the uses on (or future permitted use of) other properties in the neighborhood.” *Id.*

In particular, under the Montgomery County Zoning Ordinance “[t]he fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.” Sec. 59-G-1.2.1. See *Butler*, 471 Md. at 291, 9 A.3d at 835 (“presenting a *prima facie* case meeting the County Code’s standards and requirements applicable to specific special exception use does not ensure the approval of the special exception application”).

Whether a proposed use has a significantly adverse impact on the surrounding properties turns on the particular evidence in the record. Zoning authorities in this County are not expected merely to “measure and assess what the adverse effects of a proposed use would be on an idealized or even *average* neighborhood or property in the zone. Rather, * * * it is for the zoning board to ascertain in each case the adverse effects that the proposed use would have on the specific, *actual* surrounding area.” *Butler*, 471 Md. at 305, 9 A.3d at 844; italics in original; footnote omitted.

Under the County’s Zoning Ordinance, the applicant always bears the burden of proof that a special exception will be compatible with the surrounding neighborhood and that it also satisfies each specific zoning standard. Sec. 59-G-1.21(c). However, as discussed in the next section, a special exception may not be denied merely because it may cause adverse effects that are inherent in this type of use.

My review of the record leads me to the conclusion that Ms. Sideris’s proposal satisfies all applicable general and specific standards of the Zoning Ordinance and that the increase in Buenos Amigos enrollment will not materially adversely affect neighborhood in which it’s located. Having four additional children and one additional employee can increase traffic during rush hour but the increase will be slight. Arrival and departure times will be staggered over two-hour periods during the mornings and afternoons. Outdoor play may increase noise levels outdoors but the existing fence will baffle sound and four more children’s voices, tantrums, and laughter are unlikely to increase decibel levels perceptibly over those generated by eight children. Lighting is appropriate for a residential area.

Parking seems not to be a problem on Douglas Avenue during the crucial times of the day when parents deliver and gather their offspring to Buenos Amigos. The street is essentially empty and parking spaces plentiful. In addition, the next door driveway is also available to Ms Sideris’s clients and its continued use is a condition of approval.

I explain the reasons for my conclusions more fully as I examine each of the Zoning Ordinance’s applicable provisions.

B. STANDARD FOR EVALUATION, § 59-G-1.2.1.

The following standard of review applies to all special exceptions applications:

A special exception must not be granted without the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

A special exception, in other words, cannot be denied simply because the use will spawn effects that are common attributes of – “inherent” in – that use. The legislature has already decided that the use is permissible in the abstract despite its inherent adverse consequences.

There are several “inherent physical and operational characteristics” common to all group daycare homes: traffic to and from the site; space to drop off and pick up children; noise from children playing outside; parking for staff; and outside lighting to illuminate entryways and outdoor play areas during parts of the year. Buenos Amigos necessarily shares those characteristics. The Planning Department identified the same inherent effects using somewhat different language. Ex. 24(a) at 5. As § 59-G-1.2.1 states, “[i]nherent adverse effects alone are not a sufficient basis for denial of a special exception.”

The issue therefore is whether there are circumstances in this case that cause *unusual* – “non-inherent” – adverse effects sufficient to warrant denial of the application. As the Court of Appeals phrased it: “[T]he appropriate standard to be used in determining whether a special exception * * * should be denied is whether there are facts and circumstances that show that the particular use proposed *at the particular location* proposed would have any adverse effects above and beyond those inherently associated with such a special exception use * * *.” *Butler*, 471 Md. at 305, 9 A.3d at 844, quoting *Schultz*, 291 Md. at 15, 432 A.2d at 1327; brackets, ellipses, and italics added by *Butler*.

With one important exception, there is nothing in the record to suggest that Buenos Amigos would create non-inherent adverse effects if four children are added to its enrollment. The property is typical of the area. The streets, of typical width in a residential development, appear to offer lots of space for parents to bring and collect their children. The existing house has a normal suburban residential design. Ms. Sideris plans no exterior changes. The present lighting – a couple of 60- and

75-watt fixtures in front, back and sides – is consistent with residential use and will not change. The hours of Buenos Amigos operation are typical for daycare centers – here, from 7:30 a.m. to 5:30 p.m., weekdays only. As is true of all facilities housing infants and toddlers, shrieks of delight and anguish will undoubtedly be commonplace (but rarely more than momentary). In short, to the extent that the addition of four youngsters causes adverse effects, they are typical of the use.

The one non-inherent characteristic of the Sideris property, identified by both the Planning Board and the Planning Department, is the absence of on-site parking. I discuss parking at greater length below but I agree with both the Board and Department that all of the parking needs of the group daycare home – places for parents to bring and collect children, staff parking, and parking for the Sideris household – can be fully met by on-street parking, supplemented by the next-door driveway. Since Douglas Avenue has more than enough spaces to serve Buenos Amigos, the absence of on-site parking for non-resident staff should have no adverse effects on the neighborhood.

To the extent, however, that the group daycare home spawns adverse effects of any kind, they can be ameliorated by placing conditions on the use. Those conditions appear in part V of this document.

C. SPECIFIC STANDARDS FOR CHILD DAYCARE FACILITIES, INCLUDING GROUP DAYCARE HOMES.

Section 59-G-2.13.1 of the Zoning Ordinance contains the following criteria:

The Hearing Examiner may approve a child daycare facility for a maximum of 30 children if:

(1) a plan is submitted showing the location of all buildings and structures, parking spaces, driveways, loading and unloading areas, play areas and other uses on the site[.]

Ms. Sideris submitted an amended plan meeting these standards. Ex. 27. It is reproduced above. An earlier plan (Ex. 9) shows where the play area is located within the backyard.

(2) [P]arking is provided in accordance with the Parking Regulations of Article 59-E[.]

The parking arrangements meet the standards of Article 59-E for the reasons elaborated on below in part IV.D.

(3) [A]n adequate area for the discharge and pick up of children is provided[.]

Douglas Avenue provides sufficient street frontage to allow easy to the Sideris property. It has ample space for cars to park while parents drop off and pick up their children. They can also pull into the next-door driveway reserved for their use.

In order to reduce traffic congestion, one condition for approval of the special exception requires that parents' arrival time in the morning and afternoon be staggered.

(4) [T]he Petitioner submits an affidavit that the Petitioner will:

(A) comply with all applicable State and County requirements;

(B) correct any deficiencies found in any government inspection; and

(C) be bound by the affidavit as a condition of approval for this special exception[.]

Ms. Sideris filed the affidavit, using the statutory language. Ex. 5. Her present State certificate does not allow her to have more than six children in daycare. See Ex. 6. Ms. Sideris must file an amended State certificate with OZAH authorizing her to care for up to twelve children before she will be allowed to expand her daycare operations.

(5) [T]he use is compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity. The hearing examiner may require landscaping and screening and the submission of a plan showing the location, height, caliper, species, and other characteristics, in order to provide a physical and aesthetic barrier to protect surrounding properties from any adverse impacts resulting from the use.

For reasons stated in parts IV.A and IV.B, and as elaborated below, I find that the use here is compatible with the residential area in which it's located and that it won't result in becoming a nuisance because of traffic, noise, or type of physical activity. The outdoor play area is surrounded by an opaque 6' fence. No additional landscaping or screening is necessary.

D. PARKING.

Section 59-E-3.7 of the Zoning Ordinance requires a group daycare home to satisfy both the parking needs of the residents of the home and the needs of the non-resident staff.

Section 59-E-3.7 provides in relevant part:

*Child day care facility. For a family day care home or group day care home, one space for every non-resident staff member in addition to the residential parking requirement. The required number of spaces may be allowed on the street abutting the site. * * *⁷*

⁷ The remainder of the paragraph applies to larger daycare facilities. It states:

** * * For a child day care center, one space for every non-resident staff member in addition to the residential parking requirement if applicable and adequate parking for discharge and pick up of children. In this instance, the*

Dwelling, one-family. Two parking spaces for each dwelling unit; except, that when the slope between the standard street sidewalk elevation at the front lot line and side lot line adjacent to a street, established in accordance with the county road construction code, and the finally graded lot elevation at the nearest building line exceeds, at every point along the front lot line, a grade of 3 inches per foot, such space shall not be required.

Four on-site parking spaces are necessary in this case: one for each of Ms. Sideris's two employees and two for the Sideris household. There are, however, no on-site spaces. One option is to require Ms. Sideris to build a driveway on her lot, as one member of the Planning Board preferred. Another is to require her to create a parking pad for at least one parking space, a possibility the Planning Department report suggested. Ex. 24(a) at 9. Neither of these options is attractive. Both are expensive. Both destroy green space. More importantly, the Zoning Ordinance provides a better alternative.

The Ordinance expressly permits the number of spaces necessary for a child daycare home to be located on the abutting street, if feasible. The legislature permitted flexibility, presumably aware that small daycare homes are usually located in single-family houses that don't have enough space to provide parking for many cars, sometimes not even one.

Off-site parking is quite feasible here. Ms. Sideris's mother-in-law has made two spaces on her driveway available to her son and daughter-in-law. (The driveway is also available to parents transporting their children). As a condition of approval of the special exception, Ms. Sideris will be required to continue to use that driveway. In addition, the record demonstrates there is ample street parking along Douglas Avenue for parking the two cars that might be used by the Buenos Amigos's two employees. The employees' use of curb space should have no adverse affects on the neighborhood.

E. GENERAL CONDITIONS, § 59-G-1.21.

Section 59-G-1.21 contains overlapping criteria to assess whether the special exception use applied for meshes with the particular location chosen for it. Satisfaction of each criterion must be established by a preponderance of the evidence.

I address each criterion in turn and conclude that each has been satisfied by a preponderance of the evidence.

(a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

average drop off and pick up space required is one space for every six children. Waivers and variances are allowed in accordance with the Zoning Ordinance.

(1) Is a permissible special exception in the zone.

Group daycare homes may be located in R-60 zones by special exception. See § 59-C-1.31.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The Sideris proposal satisfies § 59-G-2.13.1 standards applicable to group daycare homes. On-street parking availability is plentiful. Adequate space is also available on Douglas Avenue and the next-door driveway for the discharge and pick-up of children.

(3) Will be consistent with the general plan for the physical development of the District, including any Master Plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a Master Plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable Master Plan, a decision to grant the special exception must include specific findings as to Master Plan consistency.

The proposal is consistent with the *Master Plan for the Communities of Kensington-Wheaton* (1989). As I noted in the introduction, the master plan encourages the establishment of small child care facilities. The plan does not contain specific recommendations for the site. The plan also places no limitations on the location of special exceptions in the defined neighborhood.

Neither the Planning Board nor Planning Department found an inconsistency with the land-use objectives of the master plan.

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

The one-family detached dwelling unit in which the daycare operates will not undergo exterior alterations and will continue to be in harmony with the typical homes of the neighborhood. There will be an extremely modest increase in the intensity of use – four more small kids, one more adult working part-time. This change is insignificant to make the use incompatible with the general character of the neighborhood. Parking is available for the use. Traffic is discussed below.

There are no other group child care homes in the neighborhood.

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Approval of the special exception will not contribute to commercialization of this long-established residential neighborhood. There is no evidence that property values will change if four small children are added to the current eight. Development possibilities in surrounding property or the neighborhood are slight. The neighborhood is already fully developed.

I find nothing in the record to suggest that increasing the enrollment by four pre-school children and one part-time employee will affect the peaceful enjoyment of surrounding properties. Although occasional screams of delight and wails of distress will emanate from the Sideris back yard, that's an inherent component of any gathering of toddlers and infants. Moreover, Ms. Sideris does not have toddlers and infants outside simultaneously in the morning, meaning that fewer than twelve children will ordinarily be outside then. In any event, as the master plan for the area notes, neighbors seldom find the sounds objectionable. *Master Plan for the Communities of Kensington-Wheaton* at 139.

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The group daycare home will have none of these objectionable effects. Noise has already been discussed.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The Planning Department reports there are no other special exception uses in the neighborhood. The conversion of a family daycare home for eight children to a group daycare home for twelve will not adversely affect the neighborhood or change the predominantly residential character of the neighborhood. Besides, the master plan encourages creation of more child care facilities in the area.

(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors, or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The group daycare home won't adversely affect the health, safety, security, morals, or general welfare of the residents, visitors, or workers in the area.

(9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

(A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of granting the special exception.

(B) If the special exception:

(i) does not require approval of a new preliminary plan of subdivision; and

(ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;

then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

(C) With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

The Planning Department report states that the site does not require a preliminary plan of subdivision. Ex. 24(a) at 8. Public facilities, the Department states, are adequate for a group daycare home. *Id.*

The Planning Department also states that activities associated with Buenos Amigos will not reduce pedestrian or vehicular safety. I agree. Each child will be brought to and collected from the rear of the Sideris house by a parent. There is space on Douglas Avenue and the next-door driveway for parents to park while they bring or call for their children.

The Planning Department states that the Buenos Amigos expansion "satisfies the Local Area Transportation Review ["LATR"] and Policy Area Mobility Review ["PAMR"] Guidelines tests and will have no adverse traffic impact on existing roadway conditions or pedestrian facilities." Ex. 24(a), att. 5 at 1, see also *id.* at 2-3. LATR and PAMR are published by the Department and were last revised on July 2011. The Guidelines are issued pursuant to the County's Adequate Public Facilities ("APF") Ordinance, M.C. Code § 50-35(k). I defer to the Department's

expertise in interpreting its own Guidelines and in applying them to the facts in this case.

(b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

No finding is necessary.

(c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

Ms. Sideris presented substantial evidence that her application satisfies applicable Zoning Ordinance standards. She has satisfied her burdens of proof.

F. GENERAL DEVELOPMENT STANDARDS, § 59-G-1.23.

(a) Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.

The Planning Department reports that the Sideris lot meets all development standards for the R-60 zone, except parking, as shown in the following table (Ex. 24(a) at 8-9):

Applicable Development Standards – R-60 Zone

Development Standards	Required	Provided
Maximum Building Height:	35 ft.	25 ft.
Minimum Lot Area	6,000 sq. ft.	7,000 sq. ft.
Minimum Width at Proposed Street Line:	25 ft.	± 56 ft.
Minimum Front Yard Setback:	25 ft.	± 38 ft.
Minimum Side Yard Setback:	8 ft.	8 ft.
Minimum Rear Yard Setback:	20 ft.	± 41 ft.
Parking Facility Side Yard Setback for Special Exceptions in a Residential Zone (§59-E-2.83)	16	N/A (The site contains no parking space)
Parking Requirement (§59-E-3.7)	2 spaces for ea. employee; 2 spaces for dwelling unit	0 on-site

(b) Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.

Parking is discussed in section IV.D, above.

*(c) Minimum frontage. * * **

This subsection, by its terms, applies only to a few special exception uses. Child daycare centers are not among them. The subsection is therefore inapplicable.

(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

Ms. Sideris received a forest conservation exemption certificate. Ex. 4. She has no plans to remove trees.

*(e) Water quality plan. * * **

The subsection applies only when land disturbance in a Special Exception Area is planned. No land disturbance will occur here. The subsection is therefore inapplicable.

(f) Signs. The display of a sign must comply with Article 59-F.

Ms. Sideris does not intend to erect a sign.

*(g) Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its sighting, landscaping, scale, bulk, materials, and textures, and must have a residential appearance where appropriate. * * *.*

No external structural changes are proposed. The building will retain its residential character.

(h) Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.

(2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

Ms. Sideris plans no change to the current lighting. The present fixtures hold 75- and 60-watt bulbs. Operations begin at 7 a.m. and end at 5:30 p.m. As a condition of approval, the lights on the side of the house must be extinguished before 6:45 and after 5:45 to avoid glare and light spillage on abutting properties, except when triggered by security sensors.

V. DECISION.

Based on the testimony and other evidence in the record, I conclude that the group daycare home proposed for 10207 Douglas Avenue, Silver Spring, meets all of the Zoning Ordinance requirements for such homes and will not have material adverse consequences for its neighbors.

The petition to operate a group daycare home at 10207 Douglas Avenue for up to twelve children in the existing single-family detached home and grounds is therefore GRANTED, subject to the following conditions:

1. The petitioner, Maria Andrea Sideris, shall be bound by all of her testimony and exhibits of record, and by her representations identified in this Opinion and Decision.

2. Petitioner must comply with all Maryland State and Montgomery County licensure requirements and standards for the operation of a group daycare home.

3. Petitioner must file with the Montgomery County Office of Zoning and Administrative Hearings a certificate issued by the State Department of Education authorizing her to care for twelve children. The special exception may not be implemented until the State certificate has been filed.

4. In accordance with M.C. Code § 59-G-2.13.1(a)(4), petitioner shall be bound by the affidavit of compliance submitted in connection with this case (Ex. 5), in which petitioner certified that she will comply with and satisfy all applicable State and County requirements, correct any deficiencies found in any government inspection, and be bound by the affidavit as a condition of approval for the special exception.

5. The number of children enrolled at the center shall not exceed 12 children; nor shall it exceed the number of children authorized by State licensing authorities. The ages of the permitted children will be determined by State licensing authorities, but no child shall be permitted to attend after its sixth birthday.

6. The number of non-resident staff present at the facility at any one time may not exceed two. A brief overlap of five minutes will be permitted to allow for a changeover of part-time personnel, if any.

7. The hours of operation will be between 7:30 a.m. and 5:30 p.m., Monday through Friday. Child care shall not be provided on weekends or overnight.

8. Arrival and departure times for the children shall be staggered, through contractual agreements between petitioner and clients, so that no more than two vehicles arrive and depart the site within any half-hour period.

9. In no event may a child be dropped off before petitioner or a staff member is present to supervise that child; nor may a child be left alone if a parent is late in making a pick-up.

10. Petitioner shall continue to use the driveway at 10209 Douglas Avenue to park her family's cars and for the delivery and collection of children enrolled in the daycare. Should driveway use at 10209 Douglas Avenue no longer be contractually available, petitioner must apply for a modification of the special exception.

11. Children must be accompanied by an adult to and from the daycare entrance.

12. No public address system or amplified sound system shall be used outside the building. Petitioner shall instruct clients that they should not blow their car horn at the site, absent an emergency.

13. All children must be under the direct supervision of a staff member at all times, inside and outside the building. All gates or other access to the outdoor playground must be secured during outdoor play in a manner that will prevent any child from opening such access and wandering off.

14. Petitioner shall maintain the grounds in a clean condition, free from debris, on a daily basis.


15. Interviews of prospective or current clients may be conducted only after 6:30 p.m. or on weekends to avoid increased traffic during rush hours.

16. No outdoor sign for the group daycare home shall be erected on the premises.

17. Outdoor lights on the side of the house must be extinguished before 6:45 a.m. and after 5:45 p.m. to avoid glare, except when triggered by security sensors. Bulbs in each outdoor light fixture shall not exceed 75 watts per fixture.

18. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

SO ORDERED.



Lutz Alexander Prager
Hearing Examiner

October 19, 2012

NOTICE OF RIGHT TO APPEAL

Any person, board, corporation, or official aggrieved by this decision may, within ten days after the decision is rendered, appeal the decision to the County Board of Appeals in accordance with the provisions of § 59-G-1.12(g) of the Zoning Ordinance.

cc: All Parties of Record